Public Prosecutor v Arul Kanda a/l Kandasamy and another case

HIGH COURT (KUALA LUMPUR) — CRIMINAL TRIAL NOS WA-45–11–04 OF 2019 AND WA-45–12–04 OF 2019
MOHAMED ZAINI J
3 MARCH 2023

Criminal Law — Malaysian Anti-Corruption Commission Act 2009 ('the MACCA') — Section 28(1)(c) — First accused charged with abetting or conspiring with second accused under s 28(1)(c) of the MACCA — Prosecution applied to call first accused as witness for prosecution — Whether application ought to be allowed — Whether first accused had made true and full discovery of all things as to which he was lawfully examined — Malaysian Anti-Corruption Commission Act 2009 ss 28(1)(c) & 63(3)

Criminal Law — Malaysian Anti-Corruption Commission Act 2009 ('the MACCA') — Section 23 — Second accused charged for using his position to amend audit report of 1 Malaysia Development Bhd ('1MDB') for his gratification under s 23 of MACCA — Whether second accused had used his office or position for gratification — Malaysian Anti-Corruption Commission Act 2009 s 23

The second accused who was the former Prime Minister and Minister of Finance of Malaysia, was charged with an offence under s 23 of the Malaysian Anti-Corruption Commission Act 2009 ('the MACCA'). The charge concerned the audit report done by the then Auditor General ('AG') for a company wholly owned by the government called 1 Malaysia Development Bhd ('1MDB'). The second accused was charged for using his position in the government to direct the AG to amend the 1MDB audit report before it was to be presented to the Public Accounts Committee ('PAC') of Parliament for his gratification. The first accused who was the former Chief Executive Officer of 1MDB, was separately charged with abetting or conspiring with the second accused under s 28(1)(c) of the MACCA. 1MDB was plagued with numerous financial scandals that came to light in 2015. The Cabinet ordered the AG to audit 1MDB and report to the PAC, tasked to investigate 1MDB. The AG formed a team and commenced its audit in March 2015. An interim audit report was presented to PAC sometime in July 2015 and the AG completed its report in December 2015. In February 2016, a copy of the report was forwarded to the second accused pursuant to the latter's request. A meeting to discuss the audit report was held on 24 February 2016 and the meeting was attended by, amongst others, the audit team, two representatives from the Ministry of Finance, a representative from the Attorney General's chambers

and the first accused. Further meetings and exchanges of e-mails were done between the audit team and the first accused. The earlier report was subsequently amended. This report was issued in March 2016 and tabled to the PAC in the same month. The prosecution contended that the second accused had managed to read the report prepared and was concerned with specific passages in the report, and in using his influence as the Prime Minister and Minister of Finance, took steps to have those passages altered or removed before it was presented to the PAC, even though the report had already been finalised. The prosecution submitted that these amendments had distorted the actual state of affairs and sought to prove that the second accused committed the act to avoid civil or criminal liability and had therefore obtained gratification. The prosecution claimed that the first accused abetted the second accused. The first accused was subsequently called as the prosecution's witness pursuant to s 63 of the MACCA.

Held, discharging and acquitting both the accused:

(1) The prosecution's application to call the first accused as a witness for the prosecution was in order. Section 63 of the MACCA did not specify that the application must be made through a notice of motion. Section 63(4) of the MACCA also stated that the application may be 'presented' to the court by the officer conducting the case, which was done in this case. The application should be made through a notice of motion if the word used was 'filed'. In addition, s 63 of the MACCA conferred a discretionary power on the court, as the section clearly stated that the court 'may' grant the prosecution's application. It did not contain an imperative dictate to compel the court to allow the application and did not offend the separation of powers. Next, the question of whether the first accused had satisfied the provisions of s 63(3) of the MACCA should only be done after all the prosecution's witnesses had finished testifying. Therefore, the prosecution's application to call the first accused to give evidence as its witness under s 63 of the MACCA was therefore allowed (see paras 33–34, 38, 42 & 44).

(2) The first accused was consistent throughout his testimony and his testimonies were compatible with the documents produced and the testimonies of the other witnesses. The prosecution in re-examination had never challenged any of the answers he had given under cross-examination that favoured the second accused, nor was there any attempt to treat him as a hostile witness. There was no evidence to suggest that he was complicit or responsible for the problems afflicting 1MDB, nor were there any suggestions made by the prosecution. The first accused had made a true and full discovery of all things as to which he was lawfully examined under the provisions of s 63(3) of the MACCA and a certificate of indemnity under the seal of court was ordered to be issued to

him. The certificate shall be a bar to all legal proceedings against him in respect of the matters arising from the charges in this case (see paras 61, 63 & 87).

(3) Although it was contended that the earlier audit report was a draft and was still amenable to changes, it was then a final report, at least in the eyes of the AG, as it was already printed and ready to be presented to PAC. It would have remained a final report had the AG disagreed with amending it. The amendments made to the earlier audit report were based on the AG's judgment and agreement. They were done based on further information and documents from the first accused, which would not have been necessary if 1MDB's management had been more cooperative before the publication of the earlier audit report. That the information came later from the first accused on 1MDB's behalf was also not extraordinary, as the AG accepted that an auditee could participate in discussions on an audit report. There was no evidence to prove that he was forced to attend the meetings or make changes to the audit report. Apart from that, there was no causal link between the amendments made and the gratification that the second accused was alleged to have sought. There was no evidence to suggest or prove that the second accused had explicitly directed the amendments made to exonerate him from any civil or criminal liability. The items taken out or amended from the earlier audit report would not expose or give rise to any civil or criminal liability against the second accused. The amendments were justified and were known to the PAC and openly discussed. Therefore, the presumption under s 23(2) of the MACCA did not apply as the prosecution could not prove gratification. The prosecution had failed to adduce credible evidence to prove the ingredients of the offence and had not made out a prima facie case against the second accused (see paras 76, 85–86 & 88).

[Bahasa Malaysia summary

Tertuduh kedua yang merupakan bekas Perdana Menteri dan Menteri Kewangan Malaysia, didakwa melakukan kesalahan di bawah s 23 Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 ('ASPRM'). Tuduhan itu membabitkan laporan audit yang dibuat oleh Ketua Audit Negara ('KAN') ketika itu untuk sebuah syarikat milik penuh kerajaan bernama 1 Malaysia Development Bhd ('1MDB'). Tertuduh kedua didakwa menggunakan kedudukannya dalam kerajaan untuk mengarahkan KAN meminda laporan audit 1MDB sebelum dibentangkan kepada Jawatankuasa Kira-kira Wang Negara ('PAC') Parlimen untuk suapannya. Tertuduh pertama yang merupakan bekas Ketua Pegawai Eksekutif 1MDB, didakwa secara berasingan bersubahat atau berkomplot dengan tertuduh kedua di bawah s 28(1)(c) ASPRM. 1MDB dibelenggu dengan banyak skandal kewangan yang terbongkar pada 2015. Kabinet mengarahkan KAN mengaudit 1MDB dan melaporkan kepada PAC, yang ditugaskan untuk menyiasat 1MDB. KAN

membentuk pasukan dan memulakan pengauditannya pada Mac 2015. Laporan audit interim telah dibentangkan kepada PAC pada Julai 2015 dan KAN menyelesaikan laporannya pada Disember 2015. Pada Februari 2016, satu salinan laporan telah dikemukakan kepada tertuduh kedua menurut permintaan tertuduh kedua. Satu mesyuarat untuk membincangkan laporan audit telah diadakan pada 24 Februari 2016 dan mesyuarat itu dihadiri, antara lain, pasukan audit, dua wakil daripada Kementerian Kewangan, seorang wakil dari Jabatan Peguam Negara dan tertuduh pertama. Pertemuan lanjut dan pertukaran e-mel telah dilakukan antara pasukan audit dan tertuduh pertama. Laporan terdahulu kemudiannya dipinda. Laporan ini dikeluarkan pada Mac 2016 dan dibentangkan kepada PAC pada bulan yang sama. Pihak pendakwaan berhujah bahawa tertuduh kedua telah berjaya membaca laporan yang disediakan dan bimbang dengan petikan khusus dalam laporan itu, dan dalam menggunakan pengaruhnya sebagai Perdana Menteri dan Menteri Kewangan, mengambil langkah untuk meminta petikan itu diubah atau dibuang sebelum ia dibentangkan kepada PAC, walaupun laporan itu telah pun dimuktamadkan. Pihak pendakwaan berhujah bahawa pindaan ini telah memutarbelitkan keadaan sebenar dan berusaha untuk membuktikan bahawa tertuduh kedua melakukan perbuatan itu untuk mengelakkan liabiliti sivil atau jenayah dan oleh itu telah mendapat suapan. Pihak pendakwaan mendakwa tertuduh pertama bersubahat dengan tertuduh kedua. Tertuduh pertama kemudiannya dipanggil sebagai saksi pendakwaan menurut s 63 ASPRM.

Diputuskan, melepaskan dan membebaskan kedua-dua tertuduh:

(1) Permohonan pihak pendakwaan untuk memanggil tertuduh pertama sebagai saksi bagi pihak pendakwaan adalah teratur. Seksyen 63 ASPRM tidak menyatakan bahawa permohonan mesti dibuat melalui notis usul. Seksyen 63(4) ASPRM juga menyatakan bahawa permohonan itu boleh 'dibentangkan' kepada mahkamah oleh pegawai yang mengendalikan kes, yang dilakukan dalam kes ini. Permohonan hendaklah dibuat melalui notis usul sekiranya perkataan yang digunakan adalah 'difailkan'. Di samping itu, s 63 ASPRM memberikan kuasa budi bicara kepada mahkamah, kerana seksyen itu dengan jelas menyatakan bahawa mahkamah 'boleh' membenarkan permohonan pihak pendakwaan. Ia tidak mengandungi arahan untuk memaksa mahkamah membenarkan permohonan itu dan tidak melanggar pemisahan kuasa. Seterusnya, persoalan sama ada tertuduh pertama telah memenuhi peruntukan s 63(3) ASPRM hanya perlu dilakukan selepas semua saksi pihak pendakwaan selesai memberi keterangan. Oleh itu, permohonan pihak pendakwaan untuk memanggil tertuduh pertama untuk memberi keterangan sebagai saksinya di bawah s 63 ASPRM adalah dibenarkan (lihat perenggan 33–34, 38, 42 & 44).

(2) Tertuduh pertama konsisten sepanjang keterangannya dan keterangannya adalah serasi dengan dokumen yang dikemukakan dan

keterangan saksi-saksi lain. Pihak pendakwaan dalam pemeriksaan semula tidak pernah mencabar mana-mana jawapan yang diberikannya di bawah pemeriksaan balas yang memihak kepada tertuduh kedua, dan tiada sebarang percubaan untuk menganggapnya sebagai saksi belot. Tiada keterangan menunjukkan bahawa beliau bersubahat atau bertanggungjawab terhadap masalah yang melanda 1MDB, dan tiada sebarang cadangan dibuat oleh pihak pendakwaan. Tertuduh pertama telah membuat penemuan yang benar dan penuh tentang semua perkara yang beliau diperiksa secara sah di bawah peruntukan s 63(3) ASPRM dan perakuan perlindungan di bawah meterai mahkamah telah diperintahkan untuk dikeluarkan kepadanya. Perakuan itu hendaklah menjadi penghalang kepada semua prosiding undang-undang terhadapnya berhubung dengan perkara yang timbul daripada pertuduhan dalam kes ini (lihat perenggan 61, 63 & 87).

(3) Walaupun dikatakan bahawa laporan audit terdahulu adalah draf dan masih boleh diubah, ia kemudiannya merupakan laporan akhir, sekurang-kurangnya di mata KAN, kerana ia telah dicetak dan sedia untuk dibentangkan kepada PAC. Ia akan kekal sebagai laporan akhir sekiranya KAN tidak bersetuju untuk memindanya. Pindaan yang dibuat kepada laporan audit terdahulu adalah berdasarkan pertimbangan dan persetujuan KAN. Ia dilakukan berdasarkan maklumat lanjut dan dokumen daripada tertuduh pertama, yang tidak akan diperlukan jika pengurusan 1MDB lebih bekerjasama sebelum penerbitan laporan audit terdahulu. Bahawa maklumat yang datang kemudian daripada tertuduh pertama bagi pihak 1MDB juga tidak luar biasa, kerana KAN menerima bahawa orang yang diaudit boleh mengambil bahagian dalam perbincangan mengenai laporan audit. Tiada keterangan untuk membuktikan bahawa beliau terpaksa menghadiri mesyuarat atau membuat perubahan kepada laporan audit. Selain itu, tiada kaitan sebab akibat antara pindaan yang dibuat dengan suapan yang didakwa terhadap tertuduh kedua. Tiada keterangan untuk mencadangkan atau membuktikan bahawa tertuduh kedua telah secara jelas mengarahkan pindaan yang dibuat untuk membebaskannya daripada sebarang liabiliti sivil atau jenayah. Perkara yang diambil atau dipinda daripada laporan audit terdahulu tidak akan mendedahkan atau menimbulkan sebarang liabiliti sivil atau jenayah terhadap tertuduh kedua. Pindaan itu adalah wajar dan diketahui PAC dan dibincangkan secara terbuka. Oleh itu, anggapan di bawah s 23(2) ASPRM tidak terpakai kerana pihak pendakwaan tidak dapat membuktikan suapan. Pihak pendakwaan gagal mengemukakan keterangan yang boleh dipercayai untuk membuktikan unsur kesalahan dan tidak membuktikan kes prima facie terhadap tertuduh kedua (lihat perenggan 76, 85–86 & 88).]

Cases referred to

Abdullah bin Atan v PP and other appeals [2020] 6 MLJ 727; [2020] 9 CLJ 151, FC (refd)
Balachandran v PP [2005] 2 MLJ 301, FC (refd)
Chandrasekaran & Ors v PP [1971] 1 MLJ 153 (refd)
Datuk Chang Hwee Min @ Chong Chui Kuen v PP [1978] MLJU 1, HC (folld)
Dato' Seri Anwar bin Ibrahim v PP [2002] 3 MLJ 193, FC (refd)
Liew Chee Hong v PP [2007] 7 MLJ 699, CA (refd)
Looi Kow Chai & Anor v PP [2003] 2 MLJ 65; [2003] 1 CLJ 734, CA (refd)
Miller v Minister of Pensions [1947] 2 All ER 372, KBD (refd)
Mohd Khir bin Toyo v PP [2015] 5 MLJ 429, FC (refd)
Nunis v PP [1982] 2 MLJ 114, FC (refd)
PP v Datuk Haji Harun bin Haji Idris (No 2) [1977] 1 MLJ 15 (refd)
PP v Datuk Tan Cheng Swee & Anor [1980] 2 MLJ 276, FC (refd)
PP v Mohd Radzi bin Abu Bakar [2005] 6 MLJ 393; [2005] 6 AMR 203, FC (refd)

Legislation referred to

Audit Act 1957 ss 7, 8(3)
Criminal Procedure Code ss 180(1), (2), (3), (4), 418
Federal Constitution arts 105, 106
Malaysian Anti-Corruption Commission Act 2009 ss 3, 23, 23(2), 24, 28(1)(c), 39, 51(1)(a)(iii), 52(1), (1)(a)(iii), 63, 63(3), (4)
Prevention of Corruption Act 1961 (repealed by Malaysian Anti-Corruption Commission Act 2009) s 19

Gopal Sri Ram (with Ahmad Akram Gharib, Mohamad Mustaffa P Kunyafam, Deepa Nair Thevaharan, Nadia Zulkefli, Hazmida Harris Lee, Fariza Amira Azman, Wafa Zainal Abidin, Nur Syakirin Yaccob and Yap How Yin) (Deputy Public Prosecutor, Attorney General's Chambers) for the prosecution.
N Sivananthan (with Jasmine Cheong) (Cheong & Maman) for the first accused.
Muhammad Shafee Md Abdullah (with Rahmat Mohamed Hazlan, Nur Syafiqah Mohd Sofian, Wan Arfan Wan Othman and Alistair Brandah Norman) (Shafee & Co) for the second accused.

Mohamed Zaini J:

INTRODUCTION

[1] The second accused was the former Prime Minister and Minister of Finance of Malaysia. His tenure ended after the fourteenth general election in 2018. He was charged with an offence under s 23 of the Malaysian Anti-Corruption Commission Act 2009 ('the MACCA 2009'). The charge against the applicant concerned the audit report done by the Auditor General then (Tan Sri Ambrin Buang) for a company wholly owned by the government

called 1 Malaysia Development Bhd ('1MDB'). In gist, the applicant was charged for using his position in the government to direct the Auditor General ('AG') to amend the 1MDB audit report before it was to be presented to the Parliamentary Action Committee for his gratification.

[2] The first accused was the former Chief Executive Officer of 1MDB. He is separately charged with abetting or conspiring with the second accused under s 28(1)(c) of the MACCA 2009.

[3] Both accused were charged separately but ordered to be tried jointly as the facts and witnesses for both charges were common.

THE CHARGES

[4] The charge against the second accused reads as follows:

> Bahawa kamu di antara 22 Februari 2016 dan 26 Februari 2016, di Kompleks Jabatan Perdana Menteri, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, sebagai seorang pegawai badan awam iaitu Perdana Menteri Malaysia dan Menteri Kewangan Malaysia telah menggunakan kedudukan kamu untuk mendapatkan suapan bagi diri kamu sendiri, iaitu, perlindungan daripada tindakan sivil atau jenayah berkaitan peranan kamu di dalam perjalanan operasi Syarikat 1 Malaysia Development Berhad (1MDB), dengan cara mengambil tindakan mengarahkan Laporan Pengauditan 1MDB yang telah dimuktamadkan oleh Ketua Audit Negara dipinda seperti di Lampiran A sebelum laporan berkenaan dimuktamadkan semula dan dibentangkan kepada Jawatankuasa Kira-Kira Wang Awam Negara (PAC), yang mengenainya kamu secara langsung mempunyai kepentingan, oleh yang demikian kamu telah melakukan suatu kesalahan di bawah seksyen 23(1) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] *yang boleh dihukum di bawah* seksyen 24(1) Akta yang sama.

[5] The charge of abatement against the first accused reads as follows:

> Bahawa kamu di antara 22 Februari 2016 dan 26 Februari 2016, di Kompleks Jabatan Perdana Menteri, Pusat Pentadbiran Kerajaan Persekutuan, di dalam Wilayah Persekutuan Putrajaya, telah bersubahat dalam pelakuan kesalahan oleh Mohd Najib bin Hj Abdul Razak (No. K/P: 530723-06-5162) iaitu, sebagai seorang pegawai badan awam iaitu Perdana Menteri Malaysia dan Menteri Kewangan Malaysia, beliau telah menggunakan kedudukan beliau untuk mendapatkan suapan bagi diri beliau sendiri, iaitu, perlindungan daripada tindakan sivil atau jenayah berkaitan peranan beliau di dalam perjalanan operasi Syarikat 1 Malaysia Development Berhad (1MDB), dengan cara mengambil tindakan mengarahkan Laporan Pengauditan 1MDB yang telah dimuktamadkan oleh Ketua Audit Negara dipinda seperti di Lampiran A sebelum laporan berkenaan dimuktamadkan semula dan dibentangkan kepada Jawatankuasa Kira-Kira Wang Awam Negara (PAC), yang mengenainya beliau secara langsung mempunyai

kepentingan, di mana kesalahan tersebut telah dilakukan hasil persubahatan kamu, oleh yang demikian kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 28(1)(c) Akta Suruhanjaya Pencegahan Rasuah Malaysia 2009 [Akta 694] dibaca bersama seksyen 23(1) dan seksyen 24(1) Akta yang sama.

[6] The relevant segment of the audit report stipulated in the charges and referred to as 'Lampiran A' is attached to this judgment as 'Annexure'.

THE PROSECUTION'S WITNESSES

[7] Sixteen witnesses testified for the prosecution, which included the first accused. They were as follows:

PW	Name	Designation/Role
PW1	Daman Huri bin Nor	Administrative Secretary, Prime Minister's Department
PW2	Natasha Rahimah Haryati bt Mohamad	Accountant, Finance Division, Prime Minister's Department
PW3	Muhammad Akmaluddin bin Abdullah	Assistant Registrar, Companies Commission Malaysia
PW4	Tan Sri Ali bin Hamsa	Former Chief Secretary to the Government of Malaysia
PW5	Nor Salwani bt Muhammad	Audit Director, National Audit Department
PW6	Tan Sri Dato' Setia Haji Ambrin bin Buang	Former Auditor General of Malaysia (2006–2017)
PW7	Saadatul Nafisah bt Bashir Ahmad	Former Audit Director, National Audit Department
PW8	Kelvin Tan Kay Jin	Former Director of Investment, Terengganu Investment Authority/1MDB
PW9	Tan Sri Mazidah Abdul Majid	Former Deputy Secretary General of the Cabinet
PW10	Lim Poh Seng	Former Company Secretary, Terengganu Investment Authority /1MDB
PW11	Tan Sri Shukry Mohd Salleh	Former Principal Private Secretary to the second accused
PW12	Tan Sri Madinah bt Mohamad	Former Auditor General of Malaysia (2017–2019)
PW13	Tan Sri Bakke bin Salleh	Former Chairman of 1MDB
PW14	Syed Aswadi bin Syed Soffian	Forensics Officer of the MACC

PW15	Arul Kanda a/l Kandasamy	Former CEO of 1MDB (first accused)
PW16	Haniff bin Lami	Investigating Officer of the MACC

BACKGROUND FACTS

[8] 1MDB began as the Terengganu Investment Authority ('TIA') in 2009. It was a holding and investment company for the state of Terengganu. Through the Ministry of Finance Incorporated, the government took over TIA in 2009 and changed its name to 1MDB. The company's objectives were, amongst others, to make a strategic investment for long-term developments and to encourage foreign investments into the country. 1MDB was plagued with numerous financial scandals that came to light in 2015. The Cabinet ordered the AG to audit 1MDB in early 2015 and report to the Public Accounts Committee ('PAC') of Parliament, tasked to investigate 1MDB. The AG formed a team and appointed PW7 as the head. This team commenced its audit in March 2015 and presented an interim audit report to PAC sometime in July 2015. The AG completed its report in December 2015.

[9] Whether the report is deemed final is a moot point. In February 2016, a copy of the report was forwarded to the second accused pursuant to the latter's request. The AG had, pursuant to the second accused's request, met the latter on 22 February 2016 in his office with PW4 and PW11, where the second accused voiced his concerns regarding the audit report. The following day, PW11 informed PW7 that a meeting would be held at PW11's office on 24 February 2016 to discuss the audit report. This meeting was attended by a team from the National Audit Department ('NAD'), namely the AG and PW7, two representatives from the Ministry of Finance, a representative from the Attorney General's chambers, PW4, PW11 and the first accused. The discussions in this meeting form the core of the charges against both accused.

[10] Further meetings were done between the audit team and the first accused at PW4's office. There were also emails exchanged between the first accused and the audit team arising from these discussions. The earlier report was subsequently amended. This report was issued in March 2016 and tabled to the PAC in the same month.

[11] Numerous civil suits and criminal charges arose pertaining to the affairs of 1MDB. The prosecution contends that the second accused exercised supreme power over 1MDB and was its shadow director, meaning he would be liable for any breach of duty civilly and criminally. The prosecution contended that the second accused had managed to read the report prepared and was concerned with specific passages in the report, and in using his influence as the Prime Minister and Minister of Finance, took steps to have those passages

altered or removed before it was presented to the PAC, even though the report had already been finalised. According to the prosecution, these amendments had distorted the actual state of affairs and sought to prove that the second accused committed the act to avoid civil or criminal liability and had therefore obtained gratification. The prosecution claims that the first accused abetted the second accused. They were both charged in December 2018. The second accused is also facing criminal charges pertaining to 1MDB, the trial of which is still ongoing. Civil suits have also been filed against the second accused, which are ongoing.

SECTION 23 OF THE MACCA 2009

[12] Section 23 of the MACCA 2009, under which the second accused is charged, reads as follows:

> 23 Offence of using office or position for gratification
>
> (1) Any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence.
>
> (2) For the purposes of (1), an officer of a public body shall be presumed, until the contrary is proved, to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any decision, or takes any action, in relation to any matter in which such officer, or any relative or associate of his, has an interest, whether directly or indirectly.
>
> (3) For the avoidance of doubt, it is declared that, for the purposes of subsection (1), any member of the administration of a State shall be deemed to use his office or position for gratification when he acts contrary to subsection 2(8) of the Eight Schedule to the Federal Constitution or the equivalent provision in the Constitution or Laws of the Constitution of that State.
>
> (4) This section shall not apply to an officer who holds office in a public body as a representative of another public body which has the control or partial control over the first-mentioned public body in respect of any matter or thing done in his capacity as such representative for the interest or advantage of that other public body.

[13] The first accused is charged under s 24 of the MACCA 2009, which reads as follows:

> 28 Attempts, preparations, abetments and criminal conspiracies punishable as offence
>
> (1) Any person who —
>
> (a) attempts to commit any offence under this Act;
>
> (b) does any act preparatory to or in furtherance of the commission of any offence under this Act; or

(c) abets or is engaged in a criminal conspiracy to commit any offence under this Act,

commits such offence and shall on conviction be liable to the punishment provided for such offence.

...

[14] The punishment for both offences is prescribed under s 24 of the MACC 2009, where if found guilty, is liable to be imprisoned for a period not exceeding twenty years and be fined not less than five times the amount or value of the gratification if pecuniary in nature, or ten thousand Ringgit, whichever is higher.

THE PROSECUTION'S CASE

The case against the second accused

[15] It would be convenient to address the charge against the second accused, as the case against the first accused calls for a different consideration since he was subsequently called the prosecution's witness.

[16] The prosecution will need to prove the following elements under s 23 of the MACCA 2009:

(a) that he was an officer of a public body; and

(b) that he had used his office or position for gratification.

That he was an officer of a public body

[17] This first element is not disputed. The second accused was, at the material time, the Prime Minister and also the Finance Minister. The public body concerned was the Government of Malaysia.

That he had used his office or position for gratification

[18] As the Finance Minister, the second accused was the sole corporate shareholder in 1MDB. The prosecution contended that he was in dominant control over the board and finance of the company under articles 68 and 117 of the articles of association, which pertain to the appointment and removal of directors and financial affairs of 1MDB. The second accused was also the Chairman of 1MDB's Board of Advisors. Some personnel of 1MDB led evidence to show his active participation in the company's affairs, which the prosecution claimed shows that he had a direct interest in the company.

[19] The starting point was a meeting at the second accused's office on 22 February 2016, where the AG met the latter, pursuant to the second accused's request. The Chief Secretary to the Government then, PW4, and the second accused's Principal Private Secretary, PW11, were also in attendance. The second accused had received a copy of the audit report prepared by the AG before that.

[20] The second accused was unhappy with the report, particularly with the inclusion of two different financial statements of 1MDB. He had asked PW6 not to include these two statements in the report and promised the latter that he would 'get to the bottom of this' as soon as possible. After the meeting ended, the second accused instructed PW4 to hold a regularisation meeting between NAD and the first accused.

[21] PW4 had, as instructed, called upon the AG and the first accused to attend a meeting at his office on 24 February 2016. The Treasury and the Attorney General's representatives were also there pursuant to PW4's invitation. The AG had on that day come with two members from the NAD, namely PW5 and PW7, but only PW7 went in pursuant to PW4's request. PW5 slid a digital voice recorder into PW7's pencil case without the latter's knowledge and turned the recording mode on. She claimed that she had done so as she would typically be the one tasked to take down the meeting minutes, and would need to have a recording of the meeting to carry out her task. A transcript of this meeting, verified and approved by all parties, was subsequently tendered and admitted as evidence. The recording of the meeting ran for two hours and 40 minutes and has also been played five times during the trial whenever a witness that was present gave evidence on that meeting (PW4, PW5, PW6, PW7 and PW 11). A follow-up meeting was held on the 25 February 2016.

[22] The earlier audit report was amended consequent to these meetings. As contended by the prosecution, the material differences are the ones set out in the Annexure. In essence, some paragraphs were amended, and some were wholly removed. A new report with the amendments done (exh P81) was published on 2 March 2016. The prosecution contended that the last report with the amendments (exh P81) would not have needed to be done and published but for the meeting on 24 February 2016.

[23] The prosecution highlighted the provisions of arts 105 and 106 of the Federal Constitution, which pertain to the tenure, powers and duties of an AG, and ss 7 and 8(3) of the Audit Act 1957, which in essence, sets out the powers of the AG and the prohibition in discussing information obtained in carrying out his duty. It was submitted that the AG, similar to the judiciary, is independent of both the Executive and Parliament and that the second accused

had caused the AG to violate the law when he required the AG to discuss the contents of the audit report with others at the meeting of 24 February 2016. The prosecution also contended that the second accused had breached the law by unlawfully interfering with the AG's constitutional duties. The courts have held that it would be an abuse of power where one uses his office to compel a civil servant to do his bidding, which is against the law. The cases of *Nunis v Public Prosecutor* [1982] 2 MLJ 114 and *Dato' Seri Anwar bin Ibrahim v Public Prosecutor* [2002] 3 MLJ 193 were cited in support.

[24] The prosecution submitted that the second accused had, in causing the AG to violate s 8(3) of the Audit Act 1957, had tine mens rea as required under s 23 of the MACCA 2009.

[25] As for the second accused using his position, which is an essential element in s 23 of the MACCA 2009, the prosecution contended that the second accused had exercised his position as the Prime Minister when he interfered with the submission of the audit report to the PAC by summoning the AG to voice out his dissatisfaction with the earlier audit report, and by directing PW4 to convene the meeting on the 24 February 2016 to discuss the earlier report. The case of *Public Prosecutor v Datuk Tan Cheng Swee & Anor* [1980] 2 MLJ 276 was cited, where the court held that the mens rea is the knowledge by the accused that he knew that he had acted as a public officer by using his public office for his advantage.

[26] In essence, the prosecution submitted that the second accused had abused his position as the Prime Minister in interfering with the AG's work and independence by compelling the AG to meet him, discuss the earlier report, attend the meeting on the 24 February 2016 to discuss the contents of the earlier report resulting in, the earlier report from being presented to the PAC and then be amended.

[27] On the element of gratification, the interpretation of gratification under s 3 of the MACCA 2009 was referred to, which stipulates as follows:

> 3 Interpretation
>
> In this Act, unless the context otherwise requires
>
> 'gratification' means —
>
> > (f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty;

[28] The prosecution contended that the second accused had an interest in 1MDB being the corporate shareholder, and also being vested in the powers to manage the business and affairs of the company. The prosecution submitted that the second accused stood the risk of being exposed to criminal or civil liability as the sole corporate shareholder for the government, as well as the Chairman of 1MDB's Board of Advisors, if the contents of the earlier report had been published as a final report.

[29] It was submitted by the prosecution that the presumption of corrupt intention under s 23(2) of the MACCA 2009 arises once it is accepted that the accused was guilty of the acts complained of for gratification, and that the burden shifts to the second accused to rebut the presumption.

The case against the first accused

[30] The prosecution had from the onset intimated its intention to call the first accused as its witness pursuant to s 63 of the MACCA 2009. The section reads as follows:

> 63 Examination of offenders
>
> (1) Whenever two or more persons are charged with an offence under this Act the court may, on an application in writing by the Public Prosecutor, require one or more of them to give evidence as a witness or witnesses for the prosecution.
>
> (2) Any person referred to in subsection (1) who refuses to be sworn or to be affirmed to answer any lawful question shall be dealt with in the same manner as witnesses so refusing may by law be dealt with by the court.
>
> (3) Every person required to give evidence under subsection (1) who, in the opinion of the court, makes a true and full discovery of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the seal of the court stating that he has made a true and full discovery of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things.
>
> (4) An application by the Public Prosecutor under subsection (1) may be presented to the court by the officer conducting the prosecution.

[31] The public prosecutor had in writing applied to call the first accused as a witness for the prosecution. Learned counsel for the second accused had objected to the prosecution's application where else the first accused's counsel had left it to the court's discretion. One of the objections raised by the second accused's learned counsel was that the prosecution's application, should have been done through a notice of motion, and not merely by way of a letter to the court. I had after hearing submissions by both parties made the following ruling.

[32] The prosecution's application under s 63 of the MACCA 2009 is premised on its written application dated 14 April 2022. Through his oral and written submissions, learned counsel for the prosecution had set out the grounds for the application. It was submitted that there is evidence to confirm that the first accused was the Chief Executive Officer ('CEO') of 1MDB at the material time and had attended the meetings on 24 and 25 February 2016. The prosecution contended that the first accused was privy to the communications with The second accused concerning the charge against him, rendering him a relevant witness for the prosecution.

[33] I am satisfied that the prosecution's application is in order. Section 63 of the MACCA 2009 does not specify that the application must be made through a notice of motion. It would have stated so expressly had that been the requirement, such as s 39 of the MACCA 2009, which requires an application to be made by an affidavit, and s 418 of the Criminal Procedure Code, where the application is required to be done by way of a notice of motion.

[34] In addition, s 63(4) of the MACCA 2009 also states that the application may be 'presented' to the court by the officer conducting the case, which was done in this case. I would be inclined to agree with the proposition by the learned counsel for the second accused that the application should made through a notice of motion if the word used was 'filed'. The fact that it states 'presented' fortifies my view that it does not have to be in the form of a notice of motion.

[35] An application under s 63 of the MACCA 2009 is to give the court and defence counsel notice of the prosecution's intention. It is apparent that the prosecution had from the onset made known its intention to invoke s 63. The letter confirms the prosecution's intention. It also signifies the prosecution's aim to make the application at this stage of the trial. There is no hindrance for the prosecution to make the application at this stage or at any stage of the trial, for it is entirely in their hands to conduct the prosecution in any manner they deem fit.

[36] I am also satisfied that the prosecution has given its ground for the application through its written and oral submissions. Putting the grounds in an affidavit would just be another form. More importantly, the defence has not been prejudiced, as they were able to consider the grounds for the application and state their respective position to the court. These grounds would also enable the court to exercise its discretion on whether to allow the application and would, in addition to that, give notice to the second accused.

[37] I am also satisfied with the grounds submitted for the application. The fact that the first accused was the CEO of 1MDB at the material time and had attended the meetings on 24 and 25 February 2016 is relevant to the charge against the second accused.

[38] That brings me to the other objection brought up by the second accused's learned counsel, namely on the constitutionality of s 63 of the MACCA 2009. Section 63 confers a discretionary power on the court, as the section clearly states that the court 'may' grant the prosecution's application. It does not contain an imperative dictate to compel the court to allow the application. I concur with learned counsel for the prosecution that s 63 does not offend the separation of powers, which our apex court has of late emphasised.

[39] A question was posed by the learned counsel for the second accused:

> What if Mr Arul Kanda's testimony in cross-examination, although not inconsistent with his testimony in examination-in-chief, supports DS Najib's defence? Would the prosecution take the position that he has not made a true discovery?

The answer is quite simply this. It does not matter whether his testimony supports the prosecution's case or the second accused's. The test under s 63 is whether the first accused has made a 'true and full discovery'. I must emphasise that the requirement for him to give a 'true and full discovery' applies throughout his tenure on the witness's stand, whether under examination-in-chief, cross-examination or re-examination. The word 'full' also needs to be given emphasised. He must speak the truth, and nothing but the whole truth, for in the words of Benjamin Franklin: 'Half truth is often a great lie'.

[40] If the court opines that the first accused has made a true and full discovery, he is entitled to the certificate of indemnity. It is worth repeating that it does not matter whether his testimony favours the prosecution or the defence. There should not be any danger of him testifying to minimise his role, as he should just ensure to tell the truth. Otherwise, he loses the privilege of getting a certificate of indemnity.

[41] The next issue is when should the court determine whether the first accused has given a true and full discovery in his testimony. That determination should only be given after the first accused has finished testifying and not before or during his testimony.

[42] The question of whether the first accused has satisfied the provisions of s 63(3) of the MACCA 2009 should only be done after all the prosecution's witnesses have finished testifying. This would naturally be at the end of the

prosecution's case. Whether the first accused has given a true and full discovery cannot be determined in isolation. The court must consider the testimonies of all the prosecution's witnesses vis a vis the first accused's testimony and the documents that have been tendered as exhibits to determine his testimony's veracity.

[43] The other issue is what would be the first accused's position if the court is of the opinion that he had failed to provide a true and full discovery. Can he resume being the accused person in this trial? I agree with the approach mooted by Justice BTH Lee in the *Datuk Chang Hwee Min @ Chong Chui Kuen v Public Prosecutor* [1978] MLJU 1 (quoted in Appendix E of *Law of Bribery and Corruption* in Malaysia by Jagir Singh) in that the first accused cannot be tried in this case by this court. The prejudice against him will outweigh the need for expediency. Should this situation arises, the first accused should be discharged not amounting to an acquittal. The prosecution is then at liberty to charge him again and have him tried by another court.

[44] The prosecution's application to call the first accused to give evidence as its witness under s 63 was therefore allowed. He proceeded to testify as the prosecution's fifteenth witness.

[45] The prosecution contended that there are two approaches in evaluating of the first accused's evidence. The first is under s 52(1)(a)(iii) of the MACCA 2009:

> 52 Evidence of accomplice and agent provocateur
>
> (1) Notwithstanding any written law or rule of law to the contrary, in any proceedings against any person for an offence under this Act —
>
> (a) no witness shall be regarded as an accomplice by reason only of such witness having —
>
> (i) accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any gratification from any person;
>
> (ii) given, promised, offered or agreed to give any gratification; or
>
> (iii) *been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence*;
>
> (b) no agent provocateur, whether he is an officer of the commission or not, shall be presumed to be unworthy of credit by reason only of his having attempted to commit, or to abet, having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person; and
>
> (c) any statement, whether oral or written, made to an agent provocateur by such person shall be admissible as evidence at his trial.

> (2) Notwithstanding any written law or rule of law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of any accomplice or agent provocateur shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence. (Emphasis added.)

[46] The prosecution in relying on s 51(1)(a)(iii) of the MACCA 2009 and *Mohd Khir bin Toyo v Public Prosecutor* [2015] 5 MLJ 429 submitted that the first accused would not be deemed as an accomplice whose evidence requires corroboration.

[47] The second approach contended by the prosecution is to treat witnesses called under 63 of the MACCA 2009 as not falling under the third limb of the sub-section, in which event the decision in *Chandrasekaran & Ors v Public Prosecutor* [1971] 1 MLJ 153 applies. This case concerned s 19 of the Prevention of Corruption Act 1961 (now repealed), which is in *pari materia* with s 63 of the MACCA 2009. Raja Azlan Shah J (as his Royal Highness then was) held:

> A witness called under s 19 is entitled to a certificate of indemnity 'if the court is of the opinion that the witness makes a true and full discovery of all things of which he is lawfully examined.' This, in my opinion, can only be decided after the witness has given evidence and not before, otherwise the provisions of that section would be quite illusory. I am bound to construe the section in the form in which it was enacted. Although the witness was only dealt with after the close of his evidence, I have no doubt that it never was the intention of the legislature to depart from well-established principles of criminal law, that *when an accused person gives evidence against a co-accused in the hope of receiving a pardon, his evidence must be even more closely scrutinised. For this reason I hold the view thai whenever an accused person is required to give evidence under s 19 of the Act he does so in such a state of suspense that he will naturally have every inclination to minimise his own part in the transaction; his evidence must therefore be treated with even greater caution*: see *Sarjit Singh v The State of Punjab* [1970] Cr LJ 944 . In other words, his evidence must meet the twin tests of reliability and corroboration ie, he has to satisfy the court not only that his evidence is in general credible, but also that there is independent corroboration in material particulars (p 155). (Emphasis added.)

[48] It was submitted that although *Chandrasekaran* was decided before the enactment of s 52(1) of the MACCA 2009, the court is entitled to interpret the sub-section as excluding a co-accused called to give evidence under that provision and instead accept the co-accused's evidence according to *Chandrasekaran*'s direction as to credibility and corroboration.

[49] The prosecution took the stand that although the first accused has made discovery of some matters, there remains a lurking doubt whether he has made

full discovery based on his demeanour and answers during cross-examination. It is the prosecution's case that only the evidence that implicates the second accused's guilt be accepted and that any evidence favouring the latter be treated with caution and not be given any weight. It was submitted that the approach of accepting part of a witness's testimony and discarding the rest is proper, as held by the Raja Azlan Shah FJ (as his Royal Highness then was) in *Public Prosecutor v Datuk Haji Harun bin Haji Idris (No 2)* [1977] 1 MLJ 15. The relevant passage is as follows:

> There is no rule of law that the testimony of a witness must either be believed in its entirety or not at all. A court is fully competent for good and cogent reasons, to accept one part of the testimony of a witness and to reject the other. It is, therefore, necessary to scrutinize each evidence very carefully as this involves the question of weight to be given to certain evidence in particular circumstances. (p 19)

[50] Learned counsel for the prosecution took the view that the first accused's evidence pertaining to the second accused's active role in the affairs of 1MDB be accepted, so as to show that he was indeed a shadow director or had material interest in the company's affairs. Nevertheless, the prosecution also took the view that the first accused is disentitled to an indemnity as he has not met the standards set by s 63 of the MACCA 2009. The prosecution however stop short of exhorting why this was the case.

The court's duty at the end of the prosecution's case

[51] The court's duty at the end of the prosecution's case is to conclude whether the prosecution has made out a prima facie case against the accused (s 180(1) of the Criminal Procedure Code ('the CPC')). The accused will be called to his defence if a prima facie case has been proven, or record an order of acquittal if there is no prima facie case (ss 180(2) and (3) of the CPC).

[52] The prosecution bears the legal burden of proving the charges against the accused beyond a reasonable doubt. The prosecution also bears the burden to adduce credible evidence to prove every single element of the offence alleged in order to establish a prima facie case, which if not rebutted or unexplained, will result in a conviction (s 180(4) of the CPC; *Balachandran v Public Prosecutor* [2005] 2 MLJ 301). In *Abdullah bin Atan v Public Prosecutor and other appeals* [2020] 6 MLJ 727; [2020] 9 CLJ 151 Tengku Maimun CJ expounded on the need to prove 'credible evidence proving each ingredient of the offence':

> [43] Section 180(4) of the CPC must be read in light of its context and legislative purpose. By so doing, the phrase 'credible evidence proving each ingredient of the

offence' in s 180(4) means that the prosecution may prove each ingredient of the offence either:

(i) by adducing credible direct evidence of that ingredient;

(ii) by drawing inferences of fact, ie, adducing credible circumstantial evidence, from which the ingredient can be inferred; or

(iii) by invoking presumptions of law, ie, adducing credible evidence of the relevant basic facts, to invoke a statutory presumption that the ingredient exists (p 166).

[53] Lord Denning's elucidation of reasonable doubt in *Miller v Minister of Pensions* [1947] 2 All ER 372 is germane:

> It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice. (p 372)

[54] The court will also subject the prosecution's evidence to a maximum evaluation (*Public Prosecutor v Mohd Radzi bin Abu Bakar* [2005] 6 MLJ 393; [2005] 6 AMR 203 (FC)). Any inference favourable to the accused must be given for his benefit should there be more than one inference (*Liew Chee Hong v Public Prosecutor* [2007] 7 MLJ 699 (CA)).

[55] The fundamental task of a trial judge at the end of the prosecution's case is to ask himself, whether he is prepared to convict the accused, should the accused opts to remain silent if the defence is called. The accused should be acquitted if the answer is no, as it would mean that no prima facie case has been made out. This approach was set out by the Court of Appeal in *Looi Kow Chai & Anor v Public Prosecutor* [2003] 2 MLJ 65; [2003] 1 CLJ 734 (CA):

> It therefore follows that there Is only one exercise that a judge sitting alone under s 180 of the Code has to undertake at the close of the prosecution case. He must subject the prosecution evidence to maximum evaluation and ask himself the question: If I decide to call upon the accused to enter his defence and he elects to remain silent, am I prepared to convict him on the totality of the evidence contained in the prosecution case? If the answer is in the negative then no prima facie case has been made out and the accused would be entitled to an acquittal. (p 752)

[56] I will now set out my findings on the prosecution's case.

FINDINGS OF THE PROSECUTION'S CASE

Against the first accused

[57] The gist of the first accused's testimony under examination-in-chief is as follows:

(a) he was a law graduate but embarked on a career in investment banking. He was attached to the Abu Dhabi Commercial Bank in 2014 when Ashvin Valiram, a friend who was also a board member of 1MDB, approached him and encouraged him to apply to be the CEO of 1MDB. The first accused was taken up with the idea as he wanted to return home. He went through several interviews and was subsequently appointed as the CEO of 1MDB in January 2015;

(b) the second accused called on 23 February 2016 and asked him to attend a meeting the following day with the audit team as the representative of 1MDB. The second accused told him to defend the company's interests and ensure that the NAD stayed within the scope of the audit, namely to verify the accounts of 1MDB. The second accused has also voiced his concerns that the report could be spun from a political perspective. He had those instructions in mind when he attended the meeting on 24 February 2016. He also participated in a follow-up meeting with the audit team on 25 February 2016;

(c) he had only seen the earlier audit report for the first time during the meeting on 24 February 2016. He agreed with the suggestion that the earlier audit report would have remained the same but for the meetings on the 24 and 25 February 2016;

(d) the first accused had briefed the second accused on what had transpired during these meetings, and the second accused had also reviewed the final audit report prepared after these meetings with the second accused. The first accused had told the second accused that 65 items were discussed, but only a few items were amended; and

(e) the first accused was also instructed by the second accused to do a roadshow in respect of 1MDB, where he was tasked to explain the issues that the company faced, the rationalisation plans, the information on the various investigations launched against the company, including the suits filed by the Department of Justice ('DOJ') of the USA. When faced with hostile questions about the second accused, he would refer to the statements issued by the Attorney General then or by the MACC, which absolved the second accused. When references were made to the DOJ suits, which were unfavourable to the second accused, he would merely invite the audience to come to their conclusion.

[58] The first accused was subsequently crossed by the learned counsel for the second accused. The material parts of his testimony were as follows.

Cross-examination by the learned counsel for the second accused:

(a) he had worked abroad for over twenty years before being approached to work for 1MDB. He was told of the financial difficulties that the company was facing and tasked to turn around the situation and restructure 1MDB. He met the second accused within the first week of taking office. The latter told him his concerns regarding the company, particularly its financial commitments and stagnant projects;

(b) within a month or so, the second accused presented his ideas on solving the company's loan obligations as they were due soon and his plans on restructuring. This was termed the rationalisation plan;

(c) he agreed when suggested that it was reasonable for the second accused, as the Prime Minister, to deem the issues regarding 1MDB as a national concern as the Ministry of Finance wholly owned it;

(d) he depended on the 1MDB's board of directors to provide him with information. However, the board did not brief him on the full affairs until the DOJ lawsuits in July 2016 exposed it;

(e) he suggested to the second accused to get the NAD to audit 1MDB, the suggestion of which was taken up. He met up with PW11 only at the Prime Minister's office on 22 February 2016, pursuant to PW11's request. At that meeting, he was shown some loose copies of what he deemed the audit report draft but did not manage to peruse it comprehensively. He only met the second accused after the 24 and 25 February 2016 meetings to brief him on what had transpired during these meetings;

(f) he also faced difficulties getting documents from the management, particularly during the audit process. He assumed the management was less than enthusiastic about assisting with auditing. He had to bear the brunt of the AG's wrath during the meetings with the audit team. Furthermore, some documents were not available as they had been taken away by the MACC and police, who had by then commenced investigations on the company. As for the amendments sought, he had supported every request with documents or provided clarification. He acceded that not all 65 proposals could be accepted, as the ultimate discretion lies with the AG. He was, however, under the impression that the audit report had not been finalised based on the AG's responses during the meeting on 24 February 2016. He also stated that the second accused had never obstructed the NAD's audit of 1MDB. When questioned about his state of mind during the meetings with the audit

team, he stated that he was not concerned about the potential political spin affecting the company arising from the audit report as the company was already facing attacks from various quarters. He was only interested in delivering the truth and was never asked to manipulate the truth; and

(g) he was never given instructions on what to say before the PAC and was adamant that he would not compromise his integrity by burying issues that ought to be raised.

[59] The prosecution's re-examination of the first accused was merely clarificatory and did not seek to contradict what was stated in the cross-examination.

[60] It is now incumbent for me to assess the veracity of the first accused's testimony and to find whether he has made a true and full discovery of all matters to which he has been examined to determine whether this court should issue a certificate to bar him from all legal proceedings on the charges in this case.

[61] The first accused, in my observation, was consistent throughout his testimony. It was evident that he had answered the questions posed honestly and to the best of his ability. His testimonies were also compatible with the documents produced and the testimonies of the other witnesses. I am mindful that he may attempt to minimise his part and amplify any wrongdoings of the second accused. He did not. His answers, to an extent, favoured the second accused. The prosecution in re-examination had never challenged any of the answers he had given under cross-examination that favoured the second accused, nor was there any attempt to treat him as a hostile witness.

[62] The prosecution had alleged biasness against the first accused and asserted that he had not made full discovery without giving reasons or referring to any parts of his testimony for this court to consider. If the first accused's testimony had indeed favoured the second accused to the prosecution's detriment, it is incumbent on them to highlight any discrepancies, which was not done.

[63] The first accused did not attempt to camouflage the shenanigans surrounding 1MDB. He was roped in to rescue the company and had left what was presumably a promising career abroad. It is general knowledge that he had been publicly vilified for the 1MDB affairs, perhaps unfairly, as many of the problems caused were before his time. There was no evidence in this trial to suggest that he was complicit or responsible for the problems afflicting 1MDB, nor were there any suggestions made by the prosecution.

Against the second accused

That he was an officer of a public body

[64] As stated earlier, there is no dispute with the first element, as has was then the Prime Minister and Finance Minister of the government.

Whether he had used his office or position for gratification

[65] The second accused was entitled to receive a copy of the audit report, as he was the Finance Minister and, therefore, a stakeholder for 1MDB. The AG and PW7 had, in their examination-in-chief, stated that it was the norm.

[66] It is not disputed that the second accused was not entirely satisfied with some of the contents of the audit report. The pertinent issue is whether he then directed the audit report to be amended for his benefit.

[67] The learned counsel argued that the second accused gave no specific instructions to amend the audit report in the manner that forms the crux of the charge. It was contended that the second accused had merely asked the first accused to defend the interests of 1MDB to avoid the contents of the report from being spun politically by his political opponents. This fact was confirmed by the first accused, PW4 and PW11. This was what the first accused said:

> Examination-in-chief of the first accused
>
> Q: Can you explain how you came to attend the meeting?
>
> A: So, I received a phone call from DSN, on the 23rd, the day before. And he asked me to attend the meeting in my capacity as President, and, of 1MDB.
>
> Q: Did he explained to you why you had to attend the meeting?
>
> A: Yes. So, there were a number of reasons given by DS. One of the key reasons was to defend the interests of the company. He also mentioned that to ensure that Jabatan Audit stuck or stayed within the scope of the audit, which was to verify the accounts of 1MDB. And he also mentioned that he had some concerns that the contents of the report could be spun from a political perspective.

[68] Even the AG confirmed that there was no specific instructions from the second accused to amend or remove anything from the audit report:

> Cross-examination of the AG
>
> Q: ... Okay, Tan Sri, when you met the Prime Minister, the Prime Minister did not tell you specifically drop this, drop that masuk ni masuk ... Prime Minister never told you that. Because you said in your report.
>
> A: Yeah.
>
> ...

Q: So, as far as you are concerned, what you is that the Prime Minister never directed you to do anything about the amendment of the report? **A**

A: Yes.

[69] One of the main issue in the audit report was the two financial statements of 1MDB. It would seem that the second accused had no knowledge of this until it was brought to his attention by the AG: **B**

Cross-examination of the AG

Q: Okay. Can you remember what you briefed him when he asked you the general question? What are the issues in this audit report, what did you precisely briefed? **C**

A: The one that I remember well was to inform him about the issue of the different version of the financial statement.

...

Q: Was on the two version of the financial statement submitted by 1MDB to two different agencies. Correct? Or rather two or more different agencies. And what was the reaction of the PM? **D**

A: He said that, we'll get to the bottom of this.

Q: Yes, you have said that. But when you briefed him, was he surprised of your disclosure that there were two financial statements? **E**

A: Well, I think I was the one who informed him.

[70] The AG also testified that the second accused merely stated that he would 'get to the bottom of it'. The AG and PW7 also testified that the PAC knew of the two financial statements of 1MDB as it was raised in the PAC proceedings before the meeting on 24 February 2016. **F**

[71] Did the second accused then instruct to amend the audit report about the two financial statements? As the second accused was not present at the meeting on 24 February 2016, only PW4 or the first accused could have been directed to do so. Both of them, however, stated that the second accused had never directed them to do so: **G**

Cross-examination of PW4 **H**

Q: Now, Tan Sri to give a very obvious instance, Tan Sri remember there were two financial statement of 1MDB for the year 2014. You remember?

A: Yes.

Q: This is one of the troubling issue. **I**

A: Yes.

Q: Correct, The Prime Minister never told you to adopt one of the two. He didn't say, take this one rather than the other one. He never said that.

A: No, YA.

A ...

Q: Alright. Now, you agree with me somebody in the management, the CEO in particular would have to take the shot. He would have to take responsibility. Why two financial statements covering same area. He would have to take the responsibility, You agree with me?

B A: I agree YA.

Q: Did anybody pressure the auditors or intimidated the auditors to drop this in the light of reasoning provided, Did anybody pressure or intimidate them to do this?

A: No pressure or intimidation. It's all up to the auditor himself.

C Q: Tan Sri Ambrin was happy to accept. He wasn't pressured into accepting it?

A: No.

[72] I now come to another amendment made to the audit report, D particularly the removal of Jho Low's name. Jho Low is the moniker of Low Taek Jho and is apparently central to the ruckus on 1MDB. PW13, a former Chairman of 1MDB, claimed in his testimony that Jho Low was the coordinator and representative of the second accused in 1MDB, even though he did not hold any official position in the company.

E

[73] One of the items removed in the audit report pertained to Jho Low's presence in the Board of Directors' meeting held on 26 September 2009. Similar to the two financial statements, it was already known to the PAC that F Jho Low was present at the board meeting of 1MDB on 26 September 2009, as mentioned in the interim audit report presented to the PAC and also discussed. The AG and PW7 confirmed this fact.

[74] The reason for the removal of Jho Low's presence in the meeting from G the audit report was provided by the AG, who testified that the removal was justified, as the minutes of the board meeting did not contain Jho Low's name even though he was present:

Cross-examination of the AG

H Q: ... So I just ask you this Tan Sri, so you saying that you were happy to drop Jho Low's name here because on paper he did not attend the meeting. Correct?

A: Yes. There was a minute given by the company to us.

Q: Alright And this is the minute where the Chairman who presided the meeting was Tan Sri Bakke.

I A: Yes.

Q: Did anybody explain to you why Tan Sri Bakke signed the minute, affirming the minute, why he was willing to drop the name of Jho Low? Why wasn't Jho Low's name mentioned? Did anybody explain to you?

A: No.

Q: Nobody explained. Now if the company provided you with the document, you acted on the document, Correct?

A: Yes.

Q: As far as you are concerned, that is the proof that you can drop Jho Low because he's not officially on record?

A: Yes.

Q: Alright, good. Now, when you dropped Jho Low's name in the context of what I've said Tan Sri, were you compromising your integrity?

A: No.

Q: Or the report's integrity?

A: No.

[75] The amendments to the earlier audit report were only done pursuant to the meeting on 24 February 2016 and subsequent discussions. The material issue is whether these amendments were highly irregular to be made to the earlier report.

[76] It was contended that the changes made to the report were based on legitimate feedback as some information was neither readily available nor given to the audit team before. It was also contended that the AG had the prerogative to accept any further response and make changes even though he had already prepared the report:

Cross-examination of the AG

Q: Now, Tan Sri I was asking you that question earlier on. Can I now direct your attention Tan Sri, you were told, you read in the report that there is apparently 2 versions of your audit report, your finalised audit report, apparently there are 2 version. Now, is that correct that there are two finalised audit report?

A: There are two versions of the report. I called it the February report and the March report.

...

Q: Okay, so the March report Tan Sri you described it was the official final report. In fact, in the Malay language, you said 'Muktamad'.

A: Yes. That was the official Muktamad report to PAC.

Q: All right. So Tan Sri, if I were to suggest to Tan Sri that the actual audit report is the audit report that you presented to PAC.

A: That is what as I report to PAC is the March report.

Q: Correct. Now as long as you have not, as long as you have not presented it to PAC and as long as you were in the, or rather you and your team, were in the midst of discussing with the auditees whether some amendments can be made or not. Can I say, that report would still be a draft, no matter what you call it, it is still a draft? Would that be correct?

A: Yea. I think the final report as far as we are concerned is the March report.

Q: Correct, so that's the final report.

A: Yes.

Q: All right. So, Tan Sri because it is important for my case that I need to ask you again, so anything prior to the March report that you tendered to PAC would be considered a draft?

A: Well you can say a final draft.

...

Q: So Tan Sri, you are saying to PAC that as long as the report is not tendered to PAC, you are entitled to alter it?

A: Yes.

Q: And that must have justification, all that yeah?

A: Yes.

[77] Although it was contended that the earlier audit report was a draft and that it was still amenable to changes, I take the view that the earlier report was, then a final report, at least in the eyes of the AG, as it was already printed and ready to be presented to PAC. It would have remained a final report had the AG disagreed with amending it. More pertinent is whether the amendments were lawfully sought and justifiable.

[78] The AG testified that he had difficulty getting some documents from the management of 1MDB before publishing the earlier report. This fact was acknowledged by the first accused, who stated that it was 1MDB's Chief Financial Officer, Azmi Tahir, who was supposed to be responsible for assisting the AG in getting documents and information. The first accused was made aware of the AG's complaint after the meeting on 24 February 2016 and proceeded to provide the documents and information not forthcoming to the AG before. The first accused stated that it was 1MDB's management that suppressed the information sought previously.

[79] Was the AG forced or coerced to change the earlier audit report? In my opinion, he was not. The AG had resolutely, under cross-examination maintained that he retains the ultimate discretion:

Q: ... Now, now that the final draft was read by at least one or two individuals, can I ask Tan Sri when they requested further to respond to your report, was that something wrong? Is there anything wrong with it?

A: Well, they can make the request.

Q: Yes. It's up to you to agree or not?

A: Yes.

[80] The AG was also referred to the notes of proceedings of his appearance before the PAC by learned counsel for the second accused:

> Q: Somewhere squarely in the middle of the page, just before where your name is, Tan Sri Dato' Setia Haji Ambrin bin Buang. I'm to read a chunk of it and then I'm gonna ask you whether all this are accurate or not you said:
>
> > Jadi yang berhormat seperti yang diketahui apabila ditanya oleh media baru-baru ini, saya telah menafikan adanya tampering pada laporan audit 1MDB yang telah dijalankan oleh Jabatan Audit Negara. Saya juga telah menyatakan 'I am in full control of the report'.
>
> My question Tan Sri, did you say this?
>
> A: Yes.
>
> Q: Now I'm going to the next paragraph:
>
> > Hari ini di hadapan PAC saya hendak ulangi, pada saya tak ada tampering, Pada fahaman saya tampering bermaksud unauthorised alteration. Unauthorised alteration, apa-apa alteration, pindaan atau perubahan yang dibuat ke atas laporan mesti mendapat persetujuan saya sebagai Ketua Audit Negara sebelum itu. Tidak ada sesiapa pun boleh meminda laporan audit selain saya iaitu Ketua Audit Negara ketika itu. Itupun selepas perbincangan dengan team audit dan mesti ada justifikasi sebelum dibuat sesuatu pindaan.
>
> Did you say all that?
>
> A: Yes.
>
> ...
>
> Q: Now you used the word 'this is authorised alteration', the alteration was authorised, you used the word authorised alteration, this is not unauthorised alteration?
>
> A: Ya, that's the meaning, ya.
>
> Q: All right now. Then you said Tan Sri, I want to get further confirmation from you. You said that because you are in full control of the audit report, you will only alter the audit report in it draft, you will only alter it after a discussion with the audit team and there must be justification for alteration.
>
> A: Yes.
>
> ...
>
> Q: And you still hold that as your principle in this case?
>
> A: Yes.

[81] It is apparent that the AG was not forced nor coerced to make the changes to the earlier audit report. He retained the ultimate discretion of accepting any proposed amendments to the earlier report. The first accused testified that many items were raised and discussed during the meeting on 24 February 2016. Some 65 items were discussed. The first accused acknowledged that he could merely raise and suggest, but the AG will

determine whether to accept or otherwise. In his view, the changes that were eventually made were proper as they were justified by the documents and information he provided. The AG also agreed to this fact:

> Q: ... So you said there were things, there were further submitted that your team agreed and you accommodated it in the amendment. Isn't it correct?
>
> A: Ya ya.
>
> Q: Which means there were other things you did not accommodate, because you did not accommodate everything that they requested. Is that correct?
>
> A: Yes.

[82] The AG was merely irritated with the fact that he had to redo the report given the time constraints. Was the final report then legitimate? The answer was provided by the AG under cross-examination:

> Q: Okay, but you are happy with the report? Your final report?
>
> A: The report we submitted to PAC, the final report I March, of course we have presented report to PAC, we are happy with our report because that report still has its integrity.

[83] The AG had several times maintained that he never compromised with the truth of the report. He was adamant that the changes made to the report were justified and took offence with his successor's (PW12) accusation that the final report had been tampered with:

> Q: You were not pleased at all with any insinuation that you had allowed your report to be tampered and authorised by you?
>
> A: Yeah, I think the centre issue was on the word 'tampering'.
>
> Q: Yes.
>
> A: My understanding of 'tampering' is that there's unauthorised alteration. *But in this particular case, there were amendments to the Laporan Audit which were authorised by me in my capacity as the Auditor General. So there's no unauthorised you know. So my purpose of appearing at the PAC was to explain why from my own perspective there was no tampering in the sense that it was done by others, outside of my control, And I did all those amendments with due consideration to the justifications on each and specific proposal to amend certain parts of the report YA.* (Emphasis added.)

[84] The AG's appointment and security of tenure are similar to that of judges. His security of tenure is guaranteed under the Federal Constitution under art 105. The AG is also conferred wide powers to perform his duties under the Audit Act 1957. The AG is, therefore, given the independence to carry out his duties without fear or favour. There are consequently very few reasons, if any, for the AG to be cowed, coerced or forced to make any decisions contrary to his belief or duties. The AG here, in my observation, is a very principled and no-nonsense person. He strikes me as determined to carry out

his duties diligently and does not suffer fools gladly. He would answer any questions posed to the point and did not mince his words where required. He is the epitome of professionalism.

[85] The amendments made to the earlier audit report were based on the AG's judgment and agreement. They were done based on further information and documents from the first accused. This would not have been necessary if 1MDB's management had been more cooperative before the publication of the earlier audit report. That the information came later from the first accused on 1MDB's behalf is also not extraordinary, as the AG accepted that an auditee could participate in discussions on an audit report. There was no evidence to prove that he was forced to attend the meetings or make changes to the audit report.

[86] As to the gratification that the second accused is alleged to have sought, I agree with the learned counsel for the second accused's submissions that there is no causal link between the amendments made and the gratification alleged. There is no evidence to suggest or prove that the second accused had explicitly directed the amendments made to exonerate him from any civil or criminal liability. He was merely concerned that the report could be spun politically. The prosecution has not established how the items removed or amended could give rise to civil or criminal liability to the second accused. In my opinion, the items taken out or amended from the earlier audit report would not expose or give rise to any civil or criminal liability to the second accused. The amendments, as stated by the AG, were justified. I also observed that the items amended or taken out were known to the PAC and openly discussed. Therefore, I find that the presumption under s 23(2) of the MACCA 2009 cannot apply as the prosecution could not prove gratification.

CONCLUSION

First accused

[87] I find that the first accused had made a true and full discovery of all things as to which he was lawfully examined and order that a certificate of indemnity under the seal of court be issued to him stating that he had made a true and full discovery of all things as to which he was examined under the provisions of s 63(3) of the MACCA 2009. This certificate shall be a bar to all legal proceedings against him in respect of the matters arising from the charges in this case. The first accused is therefore discharged and acquitted from the charge against him.

Second accused

[88] As for the second accused, I had in subjecting the evidence led by the

prosecution to a maximum evaluation, find that the prosecution has failed to adduced credible evidence to prove the ingredients of the offence, which if unrebutted or unexplained would warrant a conviction. The prosecution has not made out a prima facie case against the second accused. The second accused is therefore discharged and acquitted from the charge against him.

ANNEXURE

ITEM 2

SEBELUM PINDAAN

2.1.5. Semasa Mesyuarat Lembaga Pengarah 1MDB pada 10 Oktober 2009, Ketua Pegawai Eksekutif 1MDB memaklumkan terbitan IMTN disegerakan atas permintaan penasihat khas TIA bagi tujuan pembangunan Pulau Bidong dengan kerjasama syarikat Mubadala. Pihak AmBank (yang turut hadir dalam mesyuarat tersebut) juga telah mengesahkan penasihat khas TIA telah memberi tekanan supaya terbitan bon disegerakan.

2.1.6. Selain itu, pada bulan Jun 2015, mantan Ketua Pegawai Eksekutif 1MDB mengakui terbitan bon IMTN terpaksa diteruskan kerana perjanjian program yang ditandatangani pada 15 Mei 2009 merupakan satu *bought deal* dimana AmBank sebagai *lead arranger* dan *primary subscriber* telah mendapat langganan pasaran sekunder bagi terbitan bon tersebut. AmBank telah menandatangani *Secondary Subscription Agreement* dengan Country Group Securities Public Company Limited, Thailand (CGS) pada 18 Mei 2009 bagi terbitan IMTN berjumlah RM3.80 billion pada harga RM88.158 bagi setiap RM100 nilai nominal. *Placement Agency Agreement* turut ditandatangani pada 18 Mei 2009 dimana AmBank telah dilantik sebagai *placement agent* bagi menjual semula IMTN yang dimiliki oleh CGS.

2.1.7. Pada 18 Mei 2009, CGS telah menandatangani *Put Option Agreement* dengan Acme Time Limited sebagai *Joint-Transaction Partner.* Arahan *place out* telah dikeluarkan oleh CGS kepada Ambank pada 21 Mei 2009 dimana kesemua RM3.80 billion IMTN telah dilanggan sepenuhnya oleh institusi tempatan dalam tempoh 4 hah bekerja, iaitu antara 21 hingga 26 Mei 2009. Daripada keuntungan *place out* berjumlah RM449.61 juta (USD127.27 juta), AmBank telah membayar sejumlah USD1.30 juta kepada CGS pada 29 Mei 2009. Manakala dua bayaran telah dibuat kepada Acme Time Limited berjumlah USD113.42 juta dan USD12.55 juta masing-masing pada 29 Mei 2009 dan 13 Julai 2009.

SELEPAS PINDAAN

2.1.5. Semasa Mesyuarat Lembaga Pengarah 1MDB pada 10 Oktober 2009, Ketua Pegawai Eksekutif 1MDB memaklumkan IMTN diterbitkan atas saranan penasihat khas TIA bagi tujuan membangunkan Pulau Bidong dengan kerjasama syarikat Mubadala. Selain itu, pada bulan Jun 2015, mantan Ketua Pegawai Eksekutif 1MDB memaklumkan terbitan IMTN diteruskan kerana perjanjian program yang ditandatangani pada 15 Mei 2009 merupakan satu *bought deal* di mana AmBank sebagai *lead arranger* dan *primary subscriber* telah mendapat langganan pasaran sekunder bagi terbitan bon tersebut.

ITEM 3

SEBELUM PINDAAN

4.2. Serahan Penyata Kewangan Yang Berbeza

4.2.1. 1MDB perlu menyerahkan satu salinan penyata kewangan tahunan kumpulan 1MDB yang telah diaudit kepada pemegang sahamnya, iaitu Menteri Kewangan Diperbadankan (MKD) dalam tempoh masa yang ditetapkan. Selain itu, satu salinan penyata kewangan juga perlu dikemukakan kepada institusi pemberi pinjaman berdasarkan syarat dalam perjanjian pinjaman, Semasa mesyuarat PAC pada 18 Disember 2015, seorang ahli PAC membangkitkan sama ada benar terdapat dua versi penyata kewangan Kumpulan 1MDB bagi tahun berakhir 31 Mac 2014 antara yang dikemukakan kepada Suruhanjaya Syarikat Malaysia (SSM) dan institusi kewangan yang memberi pinjaman kepada Kumpulan 1MDB.

4.2.2. Penyata kewangan Kumpulan 1MDB bagi tahun berakhir pada 31 Mac 2014 telah diaudit dimana Laporan Juruaudit Tetuan Deloitte telah dikeluarkan pada 5 November 2014. Bagaimanapun, semakan JAN mendapati wujud beberapa perbezaan antara penyata kewangan yang dikemukakan oleh 1MDB kepada SSM dengan salinan penyata kewangan yang diserahkan kepada MKD dan institusi kewangan. Antara perbezaan yang dikenalpasti seperti jadual berikut:-

JADUAL 6.46

PERBEZAAN YANG DIKENAL PASTI

RUJUKAN NOTA KEPADA AKAUN	PENYATA KEWANGAN BAGI TAHUN BERAKHIR 31 MAC 2014	
	SSM	MKD DAN INSTITUSI KEWANGAN
Muka surat 93, perenggan pertama, Nota 18(ii) 'Available-For-Sale-Investments — Investment in segregated portfolio company'	On 1 August 2014 ... As of the date of the report, the Group had received redemptions amounting to US$1.22 billion (RM4.03 billion) ...	On 1 August 2014 ... As of the date of the report, Brazen had received redemptions amounting to US$1.22 billion (RM4.03 billion) ...
Muka surat 93, perenggan kedua, Nota 18(ii) 'Available-For-Sale-Investments-Investment in segregated portfolio company'	As at date of this report, the amounts received from the redemption of investments of US$1.22 billion (RM4.03 billion) in the SPC above have been substantially utilised for the purposes of debt interest payment, working capital and payments, to Aabar as a refundable deposits pursuant to a Settlements Agreements to extinguish the Options Agreements as disclosed in Note 41(ii)(1)	As at date of this report, amounts received from the redemption of investments of US$1.22 billion (RM4.03 billion) in the SPC above have been substantially set-aside for the purposes of debt interest payment, working capital and payments to Aabar as refundable deposits pursuant to a Settlements Agreements to extinguish the Options Agreements as disclosed in Note 41(ii)(1)
Muka surat 168, Nota 41 (ii)(c) 'Significant Events Subsequent to the End of the Reporting Period — Others	—	Ayat tambahan pada akhir perenggan (c): Subsequently, 1MDB Synergy Sdn Bhd, TNB and US-based company agreed to utilise 1MDB Solar Sdn Bhd as the joint venture vehicle to undertake solar photovoltaic projects in Malaysia.

Sumber: Penyata Kewangan Kumpulan 1MDB

Menurut maklum balas daripada pengurusan 1MDB bertarikh 9 Disember 2015, hanya ada satu penyata kewangan bagi tahun berakhir 31 Mac 2014 yang diaudit dan dikeluarkan oleh pihaknya. Memandangkan wujud perbezaan yang ketara pada kedua-dua penyata kewangan tersebut adalah wajar pihak berkuasa yang terlibat membuat siasatan lanjut terhadap perbezaan tersebut.

SELEPAS PINDAAN

Tiada dalam laporan.

ITEM 4

SEBELUM PINDAAN

JADUAL 7.5

SALAH NYATA MAKLUMAT ATAU MAKLUMAT YANG TIDAK TEPAT DIBERIKAN KEPADA JURUAUDIT/PENGGUNA PENYATA KEWANGAN

MAKLUMAT DIBERIKAN KEPADA JURUADIT LUAR/PENGGUNA PENYATA KEWANGAN	SEMAKAN JAN
Tetuan KPMG diberikan Share Sale Agreement bertarikh 31 Mac 2010 yang menunjukkan penjualan semua pegangan ekuiti 1MDB dalam 1MDB PetroSaudi Ltd. melalui kaedah melanggan Nota Murabahah yang diterbitkan oleh 1MDB PetroSaudi Ltd. Bagaimanapun, Tetuan KPMG tidak diberikan resolusi pemegang saham 1MDB PetroSaudi Ltd. bertarikh. 14 Jun 2Q10 berhubung Perjanjian Pembiayaan Murabahah.	Perjanjian Pembiayaan Murabahah diluluskan oleh pemegang saham 1MDB PetroSaudi Ltd. pada 14 Jun 2010 walaupun penyata kewangan berakhir 31 Mac 2010 menyatakan bahawa perjanjian ditandatangani pada 31 Mac 2010.

Tetuan KPMG tidak diberikan maklumat berkaitan Call Option kepada Aabar Investments PJS Ltd (Aabar Ltd) yang berlaku selepas tarikh penyata kewangan tahun 2012.	Maklumat penting tidak didedahkan dalam Nota Peristiwa Selepas tarikh Penyata Kewangan dalam penyata kewangan Kumpulan 1MDB bagi tahun berakhir 31 Mac 2012 seperti berikut: – Call Option yang diberi kepada Aabar Ltd. menerusi Option Agreement bertarikh 17 Oktober 2012 bagi memperolehi 49% ekuiti dalam 1MDB Energy (Langat) Sdn Bhd. – Jaminan korporat yang diberikan oleh 1MDB dan IPIC kepada terbitan kedua Nota USD 1.75 billion oleh 1MDB Energy (Langat) Ltd. (1MELL)
Perbezaan maklumat dalam penyata kewangan tahun 2014 yang dikemukakan kepada Suruhanjaya Syarikat Malaysia (SSM) berbanding salinan penyata kewangan yang dikemukakan kepada Menteri Kewangan diperbadankan (MKD) dan Institusi Kewangan.	Nota 18(ii) 'Available For Sale — Investment in segregated portfolio company' dalam penyata kewangan Kumpulan 1MDB bagi tahun berakhir 31 Mac 2014 yang dikemukakan kepada MKD dan institusi kewangan menunjukkan terma 'substantially set-aside' digunakan dalam penyata kewangan yang dikemukakan kepada SSM.
Pihak pengurusan 1MDB memaklumkan pihak JAN pada 9 September 2015 bahawa physical payment telah dibuat melalui akaun bank Brazen Sky Ltd. di BSI Bank bagi pihak terminating company kepada Aabar kerana , 1MDB tidak mempunyat akaun bank di luar negara.	– Bayaran penamatan opsyen Aabar didapati tidak berlaku melalui akaun bank Brazen Sky Ltd. Hasil penebusan dana portfolio SPC berjumlah USD 1.39 billion telah dimasukkan ke dalam akaun bank Brazen Sky Ltd. antara 11 September 2014 hingga 24 November 2014. – Pada tempoh yang hampir sama (12 September hingga 8 Disember 2014), sejumlah USD 1.417 billion telah dipindahkan kepada 1MDB Global Investments Ltd. (1MDBGIL).

Berdasarkan minit Mesyuarat Khas Lembaga Pengarah 1MDB bertarikh 26 September 2009 yang dikemukakan kepada JAN oleh 1MDB pada 19 Jun 2015, kehadiran Encik Low Taek Jho tidak direkodkan dalam senarai kehadiran mesyuarat tersebut.	– Semakan JAN di pejabat 1MDB pada 15 April 2015 mendapati nama Encik Low Thaek Jho dicatatkan sebagai turut hadir dalam minit mesyuarat Khas Lembaga Pengarah 1MDB bertarikh 26 September 2009. – Temu bual JAN bersama Tan Sri Bakke (mantan Pengerusi Lembaga Pengarah 1MDB) pada 19 Jun 2015 memaklumkan Encik Low Taek Jho sebenarnya hadir pada mesyuarat tersebut dan mengemukakan salinan minit mesyuarat tersebut kepada JAN yang mencatatkan kehadiran Encik Low Taek Jho dalam mesyuarat tersebut.

SELEPAS DIPINDA

JADUAL 7.5

SALAH NYATA MAKLUMAT ATAU MAKLUMAT YANG TIDAK TEPAT DIBERIKAN KEPADA JURUAUDIT/PENGGUNA PENYATA KEWANGAN

MAKLUMAT DIBERIKAN KEPADA JURUAUDLT LUAR/PENGGUNA PENYATA KEWANGAN	SEMAKAN JAN
Tetuan KPMG diberikan Share Sale Agreement bertarikh 31 Mac 2010 yang menunjukkan penjualan semua pegangan ekuiti 1MDB dalam 1MDB PetroSaudi Ltd. melalui kaedah melanggan Nota Murabahah yang diterbitkan oleh 1MDB PetroSaudi Ltd. Bagaimanapun, Tetuan KPMG tidak diberikan resolusi pemegang saham 1MDB PetroSaudi Ltd. bertarikh 14 Jun 2010 berhubung Perjanjian Pembiayaan Murabahah.	Perjanjian Pembiayaan Murabahah diluluskan oleh pemegang saham 1MDB PetroSaudi Ltd pada 14 Jun 2010 walaupun penyata kewangan berakhir 31 Mac 2010 menyatakan bahawa perjanjian ditandatangani pada 31 Mac 2010.

Tetuan KPMG tidak diberikan maklumat berkaitan Call Option kepada Aabar Investments PJS Ltd (Aabar Ltd) yang berlaku selepas tarikh penyata kewangan tahun 2012.	Maklumat penting tidak didedahkan dalam Nota Peristiwa selepas tarikh Penyata Kewangan Kumpulan 1MDB bagi tahun berakhir 31 Mac 2012 seperti berikut: – Call option yang diberi kepada Aabar Ltd. Menerusi Option Agreement bertarikh 18 Mei 2012 bagi. memperoleh 49% ekuiti dalam Powertek Investment Holdings Sdn Bhd (PIHSB). – Call Option yang diberi kepada Aabar Ltd menerusi Option Agreement bertarikh 17 Oktober 2012 bagi memperoleh 49% ekuiti dalam 1MDB Energy (Langat) Sdn Bhd. – Jaminan korporat yang diberikan oleh IPIC kepada terbitan kedua Nota USD 1.75 billion oleh 1MDB Energy (Langat) Ltd (1MELL).
Pihak pengurusan 1MDB memaklumkan pihak JAN pada 9 September 2015 bahawa physical paymenttelah dibuat melalui akaun bank Brazen Sky Ltd. di BSI Bank bagi pihak terminating company kepada Aabar kerana 1MDB tidak mempunyai akaun bank di luar-negara.	– Bayaran penamat opsyen Aabar didapati tidak berlaku melalui akaun bank Brazen Sky Ltd. Hasil penebusan dana portfolio SPC berjumlah USD1.39 billion telah dimasukkan ke dalam akaun bank Brazen Sky Ltd antara 11 September 2014 hingga 24 November 2014. – Pada tempoh yang hampir sama (12 September hingga 8 Disember 2014), sejumlah USD 1.417 billion telah dipindahkan kepada 1MDB Global Investments Ltd (1MDB GIL).

Both accused discharged and acquitted.

Reported by Nabilah Syahida Abdullah Salleh